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July 24, 2019

Judge Mary Kay Vyskocil
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: Ronald L. Cohen, Esq., Chapter 7 Trustee v. Andrew Charles
Adversary Proceeding No. 18-01646 (MKV)

Judge Vyskocil:

I am a Partner at Kamerman, Uncyk, Soniker & Klein P.C., counsel to Defendant in the above captioned action. I write, pursuant to Local Rule 7056-1(a), to seek leave to move for summary judgment and sanctions under Rule 11, 28 U.S.C. § 1927, and 11 U.S.C. § 105.

Briefly, Debtor is First Wives Entertainment Limited Liability Company (“FWE”). On September 26, 2018, FWE’s Trustee filed an adversary proceeding against Charles, alleging FWE fraudulently transferred \$300,000.00 from “its bank account” to Charles in August 2014 (Dkt No. 1, ¶ 31). The Trustee further alleged that the money “was for repayment of a loan that [Charles] had made to another entity, and the Debtor received no value on account of the Transfer.” (*Id.*, ¶ 32). The truth, as the Trustee admitted at deposition he was well aware at the time he filed his frivolous complaint, was very different.

First, the Trustee was fully aware at the time he issued the Complaint that the transfer was not made by the Debtor, FWE, but by a related entity, First Wives US/Australia Limited Liability Company (“US/Australia”), from US/Australia’s (not Debtor’s) bank account (Deposition of Ronald Cohen (“Cohen Dep.”) at 34:8-37:16, 57:14-58:4; 97:8-110:9).¹ The Trustee’s theory of the case (unpled and unarticulated in the Complaint) is that the principals of US/Australia had a subjective intent to later transfer US/Australia’s assets to FWE, and that purported subjective intent – which the Trustee acknowledges was not legally binding – meant that US/Australia’s funds transferred to Charles were Debtor’s property even though Debtor had no legal or equitable claim on the funds at the time of the transfer. (*Id.* at 34:8-37:16, 94:4-12, 95:4-96:25).² Of course, it is axiomatic that only the transfer of property belonging to the Debtor, or in which Debtor had an equitable interest, can support a fraudulent conveyance claim under Section 548 of the Bankruptcy Code. *See In re Plassein Int’l Corp.*, 366 B.R. 318, 326 (Bankr. D. Del. 2007) (no “claim for avoidance of a fraudulent conveyance because the Trustee does not allege that either Plassein or any other Debtor made any transfers ... Since no Debtor made a transfer, there is no legal basis for any fraudulent conveyance claim.”), *aff’d*, 388 B.R. 46

¹ Copies of the relevant pages of Mr. Cohen’s deposition are annexed hereto as Exhibit A.

² US/Australia and FWE did not merge; rather, they continued as separate legal entities.

(D. Del. 2008), *aff'd*, 590 F.3d 252 (3d Cir. 2009). Because it is undisputed that no property of the Debtor was conveyed, and no conveyance was made by Debtor, Charles is entitled to summary judgment. Moreover, because the Trustee and his counsel were aware of this at the outset of the case, the action is frivolous, and the Trustee's and counsel's repeated refusals to dismiss the litigation is sanctionable.

Second, that is not the only frivolous aspect of this case. The Trustee was equally aware, at the time that he issued the Complaint, that the payment to Charles was made by US/Australia on account of the \$300,000.00 debt Reach Out Entertainment ("ROE") owed Charles. (Cohen Dep. at 38:7-19; 57:14-59:4). The Trustee was fully aware that at the time of the allegedly fraudulent transfer, US/Australia owed ROE significantly more than \$300,000.00. (*Id.* at 170:11-21; 185:10-187:13). And the Trustee acknowledged that had the payment to Charles been made first to ROE, and then from ROE to Charles, he would not have filed the fraudulent conveyance action against Charles. (*Id.* at 163:15-166:3; 185:10-187:13).

But it is well-settled that a debtor's payment to a third party on behalf of a creditor, which reduces the debtor's own debt to that creditor, is "value" for purposes of a fraudulent conveyance claim. *See Rubin v. Manufacturers Hanover Tr. Co.*, 661 F.2d 979, 992 (2d Cir. 1981) ("fair consideration will often exist for a novation, where the debtor's discharge of a third person's debt also discharges his own debt to that third person"); *Klein v. Tabatchnick*, 610 F.2d 1043, 1047 (2d Cir. 1979) ("Benefit to a debtor need not be direct; it may come indirectly through benefit to a third person"); *Barr Creelman Plumbing Supply Co. v. Zoller*, 109 F.2d 924, 926 (2d Cir. 1940) ("[i]t would have been proper for [Debtor] to satisfy part of its debt to [Creditor] by writing these checks in favor of [Creditor]'s creditor, the appellant"). Thus, even if US/Australia was the equivalent of the Debtor for purposes of a fraudulent conveyance action, the Trustee was fully aware, at the time he issued the Complaint, that US/Australia (and the Debtor) received exactly equivalent value for the conveyance.

Despite these facts and clearly established law, which counsel for Mr. Charles has repeatedly called to the attention of counsel for the Trustee, the Trustee and his counsel have repeatedly refused to voluntarily dismiss the action. Given the lack of any colorable basis for the Trustee's claims (from the time they were made to the present),³ and that the Trustee pled his claims in a manner that hid his contention that US/Australia's assets could be deemed Debtor's (by falsely alleging that the transfer was made from Debtor's bank account), and thereby precluded a motion to dismiss, sanctions are appropriate. *See In re Khan*, 488 B.R. 515, 535 (Bankr. E.D.N.Y. 2013), *aff'd sub nom. Dahiya v. Kramer*, No. 13-CV-3079 DLI, 2014 WL 1278131 (E.D.N.Y. Mar. 27, 2014), *aff'd sub nom. In re Khan*, 593 F. App'x 83 (2d Cir. 2015). Leave to move for summary judgment and sanctions should be granted.

Respectfully submitted,



Akiva M. Cohen

AMC:cl

³ The Trustee repeatedly testified that his ignorance of the well-settled law governing novation was the basis for *all* of the adversary proceedings he brought. (Cohen Dep. at 170:22-174:6; 182:4-25).

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re:

4 FIRST WIVES ENTERTAINMENT LIMITED
5 Chapter 7
6 Case No. 16-11345 (MKV)
7 Debtor.

8 -----X
9 RONALD L. COHEN, ESQ., Chapter 7 Trustee of
10 The Estate of FIRST WIVES ENTERTAINMENT
11 LIMITED LIABILITY COMPANY
12 Adv. Pro No 18-01646 (MKV)
13 Plaintiff,

14 V.

15 ANDREW CHARLES,
16 Defendant.

17 -----X
18 Volume 2

19 CONTINUED DEPOSITION OF RONALD COHEN
20 New York, New York
21 Monday, July 1, 2019

22
23
24 Reported by:
25 Mark Richman, CSR, RPR, CM
Job No. 163119

July 1, 2019
10:30 A.M.

Continued Deposition of RONALD COHEN,
held at the offices of KAMERMAN, UNCYK,
SONIKER & KLEIN P.C., 1700 Broadway,
42nd Floor, New York, New York,
New York before Mark Richman, a Certified
Shorthand Reporter, Registered
Professional Reporter and Notary Public
within and for the State of New York.

APPEARANCES:

ROSEN & ASSOCIATES
Attorneys for Plaintiff
747 Third Avenue
New York, New York 10017
BY: SANFORD ROSEN, ESQ.
JUSTIN RYU, ESQ.

KAMERMAN, UNCYK, SONIKER & KLEIN
Attorneys for Defendant
1700 Broadway
New York, New York 10019
BY: AKIVA COHEN, ESQ.

RONALD COHEN

RONALD COHEN, called as a
witness, having been first duly sworn
by the Notary Public (Mark Richman),
was examined and testified as
follows:

EXAMINATION BY MR. COHEN:

Q. Thank you for coming back. I
just want to make sure that I completely
understand your testimony from the last
time you were here. The trustee's
position with respect to the transfer
alleged here is it was a transfer from
First Wives US/Australia Ltd. to my
client Mr. Charles, correct?

A. In part. Correct in part.

Q. Which part of it is not correct?

A. Because I believe we've -- I
stated last time -- I don't have the
transcript before me and I have not had
a chance to review it -- but whatever it
says it says. But I believe our
position has been at the time of that
transfer it was the intent and purpose
of people at, running First Wives US

RONALD COHEN

that First Wives Australia, that entity
would be rolled into or was in the
process of being rolled into First
Wives, the debtor here, and that that
transfer was therefore of assets of the
debtor here.

Q. Okay.

A. That's our position.

Q. Understood. Understood.

A. Just so that's clear.

Q. And you anticipated my next
question so I think we're all on the
same page. I believe you alleged in
your complaint in this action that that
was actually, that transfer to Mr.
Charles was actually the payment of
another company's debt to him, correct,
Reachout Entertainment, yes?

A. That's what we understood, yes.

Q. Now, in your complaint you
described the bank account that the
money came out of as the debtor's bank
account. Do you recall that?

A. What I do recall is that we

1 RONALD COHEN

2 allege it was its property that was
3 transferred and the use of the word its
4 in my view would cover such a situation
5 as I just described in my prior answer.

6 Q. Okay. If you said that it came
7 out of its account, the debtor's
8 account, would that have been an
9 accurate statement?

10 A. I believe it would be accurate to
11 the extent that you can understand, as
12 we have alleged, as I said earlier, this
13 was --

14 MR. ROSEN: Objection.

15 Q. Okay, you can continue your
16 answer.

17 A. My answer is that partly you're
18 asking legal conclusion, I think. But
19 beyond that issue, my understanding is
20 that the people running First Wives, the
21 debtor at that time intended and were in
22 process of effectuating what I'll call
23 the turnover or the use of the assets of
24 First Wives Australia to deal with First
25 Wives US. And shortly thereafter the

1 RONALD COHEN

2 transfer to you, they did effectuate a
3 transfer of the money in First Wives
4 Australia bank account into a separate
5 bank account of the debtor.

6 So whether at the time of the
7 transfer of the First Wives Australia
8 was already the debtor's account or in
9 the process of becoming the debtor's
10 account or was an alter ego of the
11 debtor where one entity was an alter ego
12 of the other and therefore the property
13 was the debtor's property, that's all to
14 be determined by the court I would
15 assume, but that's where we are going on
16 the facts.

17 Q. You've alleged that the transfer
18 to Mr. Charles was a fraudulent
19 conveyance, correct?

20 A. Correct.

21 Q. And as you understand it, that
22 means that the debtor didn't get fair
23 value in exchange for that transfer,
24 correct?

25 MR. ROSEN: Objection.

1 RONALD COHEN

2 A. You're stating a legal
3 conclusion. But my understanding is
4 yes, that's the debtor did not receive
5 their value, the payment of that other
6 company's debt.

7 Q. If you believed that the debtor
8 had received fair value, would you have
9 authorized this claim?

10 MR. ROSEN: Objection.

11 A. The answer is it would not meet
12 the legal criteria of a fraudulent
13 transfer.

14 Q. Given your position --

15 A. By the way, the other company we
16 are talking about was not First Wives
17 Australia.

18 Q. Reachout Entertainment?

19 A. Yes.

20 Q. You sort of anticipated my next
21 question. If you at First Wives
22 US/Australia had received fair value in
23 exchange for this transfer, would you
24 have authorized bringing a fraudulent
25 conveyance claim?

1 RONALD COHEN

2 MR. ROSEN: Objection.

3 Q. You can answer.

4 A. I don't know.

5 Q. If your position is that First
6 Wives US/Australia is an alter ego of
7 the debtor, then for purposes of
8 transfers of its assets being assets of
9 the debtor, then wouldn't you also have
10 to acknowledge that if First Wives
11 US/Australia received fair value then so
12 did the debtor?

13 MR. ROSEN: Objection.

14 A. I don't think I have to
15 acknowledge anything in this situation.
16 All I have to do is prove less than fair
17 value to this debtor.

18 Whether or not, you know, there
19 was value to the First Wives Australia I
20 guess is another question. Maybe it's a
21 defense for you to allege, I'm not sure.
22 But I don't think it's part of my burden
23 here.

24 Q. Okay. I just want to understand,
25 just want to understand your position.

RONALD COHEN

Entertainment Limited Liability Company, correct?

A. Yes, that's correct.

Q. Okay. It is true, is it not, that my client is the only person who received a transfer from First Wives US/Australia that you are seeking to recover as a transfer of property of the debtor, correct?

A. I don't believe any of these others involve the bank -- let's put it this way. At the time of -- at the time of -- at the time of the transfer to your client preceded all of these by approximately two months and I believe that at the time of the transfer to your client First Wives US was -- had just been formed, just been formed and organized and was in the process of getting a bank account opened which it subsequently did open. And I believe at some point as I said earlier, the money from First Wives Australia that was in its account, including money that was

RONALD COHEN

left after the \$300,000 sent to your client, was put into the First Wives debtor bank account.

Q. Okay.

A. So that's what I believe was the facts. I believe that in all the complaints you've mentioned here --

Q. I'm going to cut you off here.

A. Fine.

Q. Because that wasn't the question I asked.

A. Okay.

Q. The question was have you brought any adversary proceedings against anybody other than my client who received funds from the First Wives US/Australia bank account?

A. No.

Q. Okay. Why not?

A. Well first of all, we had records going back only so far. And prior to filing of the complaint we reviewed certain documents and we noticed some information about this transfer. We

RONALD COHEN

noticed that it had gone out a day or so before the money was sent to First Wives US's bank account.

We noticed that there was information concerning Mr. Charles in our files concerning his address and where he was.

We thought, from maybe notes we had taken, that there's some involvement with Mr. -- I think it was Hassan in some way, I'm not sure, but there was some connection between those people. And when we saw in notes and emails references to the fact that people sending the money out believed this was property of the debtor and it was the debtor's property, did not refer to it as separate entity's property, we felt this was basis to bring a claim against Mr. Charles, particularly because we had the information that it was for Reachout Entertainment. It was stated right in an email it was repay a loan that Mr. Charles had made to Reachout

RONALD COHEN

Entertainment, not to First Wives Australia, not to First Wives US but to Reachout Entertainment.

We felt this was a sufficient basis against this particular defendant to bring this suit. We did not have any of that information as to any other payments out from First Wives Australia's account.

Q. Did you have First Wives Australia's bank statements at the time?

A. We had First Wives -- yes, we had some First Wives Australia bank statements in the boxes that were in my office that had been received from Ms. Marino, Ms. Mazur-Marino her name is.

MR. COHEN: Let's mark this one.

(Exhibit 10, FWC US/Australia cash flow report was marked for identification.)

Q. Who is Ms. Mazur Marino?

A. She was the prior Chapter 7 trustee that I succeeded. Of the debtor

1 RONALD COHEN

2 anything from Mr. Choueka or otherwise
3 that would contradict it, correct?

4 MR. ROSEN: Objection.

5 A. I've never talked to Mr. Choueka,
6 and otherwise I don't know who that
7 would encompass. But certainly I have
8 nothing from Mr. Choueka, I've never
9 talked to him.

10 Q. You never heard otherwise from
11 anybody, correct?

12 MR. ROSEN: Objection.

13 A. Otherwise that it was the
14 intention to have these assets and
15 liabilities both go over to First Wives,
16 I haven't heard -- I have not heard that
17 from anybody else that it wasn't.

18 Q. Okay. And you are confident that
19 it was the intent to have the assets
20 travel over, correct?

21 A. Well, the reason on the asset
22 side I have more than little confidence
23 is that there actually was asset
24 transfers. I believe there was an
25 assignment of the rights and I believe

1 RONALD COHEN

2 there was a transfer of money in a bank
3 account, maybe more than one transfer.
4 I certainly noted there was a transfer
5 right after your client got paid.

6 Q. And so given that transfer of all
7 of the assets out of First Wives
8 US/Australia to First Wives

9 Entertainment, then really only one of
10 two things is possible, right, either
11 the debts traveled with the assets or
12 that transfer of assets to the debtor
13 was a fraudulent conveyance, correct?

14 MR. ROSEN: Objection.

15 A. That's two possibilities. There
16 may be others.

17 Q. Can you think of any others?

18 A. Maybe it was an investment.

19 MR. ROSEN: Objection.

20 A. Maybe it was an investment. I
21 don't know. Maybe it was -- maybe they
22 were going to have the capital go to
23 First Wives Australia. I don't know.
24 There could be other things it was.

25 Q. Have you seen anything with

1 RONALD COHEN

2 capital going to First Wives
3 US/Australia?

4 A. No, I haven't. But doesn't
5 escape me possible that there was other
6 things going on. The fact that people
7 intended to do one thing does not
8 automatically mean that they did it, and
9 it also doesn't mean intending to do one
10 thing and doing that meant they did the
11 other thing which is have the
12 liabilities actually be assumed.

13 Q. Right.

14 A. And by the way, by the way just
15 so it's clear, you know, the other
16 claims we made against people who claim,
17 who we've claimed were repaid by the
18 debtor for having, on behalf of -- the
19 other people who we have sued who we
20 mentioned here in the earlier exhibits,
21 4 through whatever it was, 9, that we
22 sued, were also alleged to have received
23 -- Reachout Entertainment, made loans to
24 Reachout Entertainment and received
25 funds from the debtor. So it's right up

1 RONALD COHEN

2 the same alley in my view as those
3 claims.

4 Q. I want to focus on what you
5 talked about with intent though for a
6 second.

7 Because you said the fact that
8 people intended to do one thing does not
9 automatically mean that they did it,
10 correct?

11 A. That's correct.

12 Q. Okay. And in fact the fact that
13 people intend to do something doesn't
14 mean they are legally barred from
15 changing their minds, correct?

16 MR. ROSEN: Objection.

17 A. Legally barred? Of course
18 they're not legally barred.

19 Q. Okay.

20 A. Change their minds all the time.

21 Q. And you'd agree that if between
22 forming the intent to send all of these
23 assets to First Wives Entertainment and
24 the date of the actual asset transfer,
25 they said, you know what? We want to

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use a different corporate structure, we're not going to send the assets, First Wives Entertainment Limited Liability Company wouldn't have had any claim to bring against US/Australia for not sending the assets, would it?

MR. ROSEN: Objection. Can I go to the bathroom?

MR. COHEN: After he answers this question, yes.

A. Can you repeat the question? I was distracted.

(The requested portion of the record was read.)

A. I don't know of any legally binding document that would have required First Wives Australia to send them to the debtor, so I guess the answer is there would be no legal claim. If the intent had changed and it was just people talking on an email or in a page like this, there would not be legally enforceable by First Wives US to get those assets.

RONALD COHEN

Q. Thank you. Let's take a break.

(A recess was had.)

MR. COHEN: Let's mark this one. (Exhibit 12, Complaint in Chapter 7 action was marked for identification.)

Q. I put in front of you exhibit 12 which is your complaint in this adversary proceeding. Do you see that?

MR. RYU: If I'm not mistaken this was actually exhibit 1 in the prior deposition.

MR. COHEN: I had a feeling it was, I just wasn't certain. Just for ease of reference we'll call it 12 and it will be doubled up.

Q. So exhibit 12 is your client in this adversary proceeding, do you see that?

A. Yes, appears to be so, yes.

Q. And if you turn to paragraph 6 of exhibit 12, it is again identical to those prior paragraphs and point to -- strike that.

RONALD COHEN

If you turn to paragraph 6 of exhibit 12 it is again identical to the paragraph 6s that we looked at before and pointing to paragraph 31 for the details of the transfer at issue, correct?

A. Yes.

Q. If you then flip to paragraph 31, you'll see the allegations of the transfer here are again identical other than the date of the transfer, the alleged transfer and the amount of the transfer, correct?

MR. ROSEN: Objection. You can answer.

A. Yes.

Q. Only this time when your complaint says its bank account, you're not referring to First Wives Entertainment Limited Liability Company as you are every other time a complaint uses the language its bank account; you're referring to the bank account of US/Australia limited, correct?

RONALD COHEN

A. Yes, but we're also referring to, which you didn't refer me to the last phrase in paragraph 31 talks about a transfer of an interest in the debtor's property. I think our view is clear that an interest in the debtor's property can include interest that other people have in their name, including in their bank account. So I think it's clear that the word its is to be taken in context here and can have a broader meaning and in this case does have a broader meaning than in the other complaint. So it all depends on context as I kind of said earlier.

Q. Is there anything -- well let's put it this way. What fact alleged in this complaint do you think puts Mr. Charles on notice that the trustee's position in this claim is that assets that he received from a company other than First Wives Entertainment Limited Liability Company are property of the debtor and were actually received from

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the debtor on an alter ego theory or on your theory that a party's subjective intent to subsequently send those assets to the debtor makes it property in which the debtor has an interest?

MR. ROSEN: Objection.

A. You got a lot in there. But I would go back to what I just said previously in the last answer. We have alleged that the debtor has interest in that property and that's all that transfer involved an interest of in the debtor, an interest of the debtor in that property. It isn't so limited to the fact that someone else's name is on the bank account. And if he -- if he took that -- oh, I'm not worried it's because that came from an Australian bank account he didn't read the whole, the whole allegation.

So I think anyone looking at this and looking at the whole allegation would understand that we're claiming the debtor had an interest in that property

RONALD COHEN

on October -- on August 25th, 2014.

Q. Even if it didn't come from the debtor's bank account?

MR. ROSEN: Objection.

A. Absolutely. Absolutely that's what I said.

Q. Okay. Even though the allegation was that it did come from the debtor's bank account?

MR. ROSEN: Objection. You're misstating.

A. The allegation it came from its bank account, it doesn't say who its was. It doesn't mean the debtor as Limited. It could mean other companies in which the debtor either was going to be receiving the assets from, shortly thereafter as I've testified, or that there was an intent that the debtor receive those assets or there was actually from the time it was all formulated back in July as those earlier emails referred to, intentionally going to become the debtor.

RONALD COHEN

Q. Just grammatically you understand that the word its is a pronoun that refers to an antecedent noun, correct?

MR. ROSEN: Wowza.

A. Yes, I understand it's a pronoun and I understand it refers to debtor and I understand the debtor can mean more than just this entity because I understand that the debtor's interest in property can be in property that is not in its name, is not in its current possession or control or custody. It could mean the debtor has an equitable interest in property, could mean a lot of things.

So all of which is up for the lawyers and the judge to decide in this case. And as a matter of pleading, I think it's understood that we don't have to specifically state chapter and verse of every possible theory in a pleading.

Q. You think you don't have to put in a pleading --

MR. ROSEN: Objection.

RONALD COHEN

Q. -- whose bank account the money came out of?

MR. ROSEN: Objection.

A. We did put in a bank account it came out of.

Q. Plaintiffs, right?

A. What's that?

Q. Plaintiff's bank account?

A. We're claiming that it came out of -- plaintiff. I'm the plaintiff. I had no bank account. It's not me. It's the debtor, okay? And who was the debtor?

Q. Of the debtor's bank account, correct?

A. Yes, the debtor's bank account, yes.

Q. And the debtor's bank account in your view is the bank account that is not the debtor?

MR. ROSEN: Objection.

A. That's not my statement. You're mischaracterizing. It's the debtor's bank account in the sense that money the

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debtor had an interest in that money, was in that bank account, that's what we're talking about, not the bank account. Who cares about the bank account? We care about whose property it was. If you look at the word property that's the critical element, Mr. Cohen, not anything else. The keywords in that sentence are debtor's property. That's what I'm recovering. That your client got a fraudulent conveyance in our view and that's what we are seeking to recover.

Q. So do you think that the allegation that you're seeking to avoid the transfer of \$300,000 from the debtor's bank account was accurate or inaccurate?

MR. ROSEN: Objection.

A. Again you're misstating it. Don't try to trap me. I've already testified about the fact. The critical fact is whose property it was. The bank account it came out of in my view is not

RONALD COHEN

the relevant important fact. It's the property interest that the debtor had in those funds.

Q. I understand.

A. And that's what we are suing you on. If I didn't allege that I wouldn't be here and your client wouldn't have been sued. I'm alleging it's the debtor's property. You show the court it's not and you win.

Q. I understand that. I'm asking you a different question. I understand you have --

A. No, you're trying to trap me into a question to admit that the debtor name was not on that particular bank account. I'm not going. You can argue that as relevant and important to you and in your whatever it's going to be motion you're going to make in this case. You can allege all those things. I'm telling you that our view is it was the debtor's property and Mr. Choueika said it was the debtor's property in the

RONALD COHEN

email that he sent to the debtor's counsel. If you read that email it's very clear. You haven't even bothered to show me that. So that's what I'm talking about.

Q. I'd ask you to please stop yelling, sir.

A. I'm not yelling.

MR. ROSEN: He's not yelling.

A. I raised my voice slightly but I did not yell.

Q. I'm not asking you right now about this line that says it was a transfer of an interest in the debtor's property. You explained your view of that line. Whether I agree with it or not is irrelevant.

What I'm asking you now is this other allegation that you pled in your complaint which says that based on plaintiff's analysis of the debtor's financial affairs, plaintiff is seeking to void the transfer of \$300,000 from its bank account. You agree that its in

RONALD COHEN

that sentence refers to the debtor, correct?

A. Yes.

Q. Do you believe it was accurate when you allege that the money was transferred from the debtor's bank account, regardless of whether it had an interest in the property, was it the debtor's bank account?

MR. ROSEN: Objection.

A. The debtor did not have legal title to that bank account at the time of the transfer.

Q. So that's a no, correct?

MR. ROSEN: No, that's not a no.

A. That's my statement. They're not legal title. You want more? I'll give you more. Maybe you don't want me to volunteer. I'll tell you I believe the debtor had an equitable interest in that bank account.

Q. And what was the basis of that equitable interest?

MR. ROSEN: We've been through

RONALD COHEN

it.

A. We've been through that before.

Q. Because there was an intent to subsequently transfer the money, correct?

A. And a statement from the gentleman most in the position to know in his view it was the debtor's and the gentleman in question is Mr. Choueka.

Q. Just to be clear, that statement you're referring to is a two years later communication in the context of the bankruptcy, correct?

A. In which Mr. Choueka would have every -- yes, that's correct, would have every to tell the truth, would have every, because it is a federal crime to conceal things and I assume he did it in order to correct what he thought was some confusion. And I can't imagine any reason why he would not have been telling the truth in that.

But you're free to depose him and ask him questions directly as I haven't

RONALD COHEN

even talked to him.

Q. You're not contending that that email was a business record of the defendants -- of the debtor's, excuse me, are you?

MR. ROSEN: Objection.

A. I don't know whether it is or isn't.

Q. Okay. Was it made in the debtor's ordinary course of business?

A. Again, I don't know that.

MR. ROSEN: Objection.

A. I don't know the answer to that question.

Q. Okay. Just checking.

MR. COHEN: Let mark this.

(Exhibit 13, Chase Bank account statement was marked for identification.)

Q. Before we move on from exhibit 12, I just want to wrap this up. At the time that you made the allegations in the adversary complaint, you were fully aware that the money had come out of

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US/Australia's bank account and you were proceeding on the theory that debtor had an interest in that property even though it was in US/Australia's bank account, correct?

MR. ROSEN: Objection.

A. I think that's -- I think that's a fair statement, yes.

Q. Okay. Let's take a look at exhibit 13. And exhibit 13 I will represent to you are the bank account statements that your attorney produced to us for US/Australia that are dated after August 2014. So if you take a look, have you seen these bank statements before?

A. No. I'm aware that my attorney turned them over to you. He mentioned we were giving you the bank statements.

Q. If you take a look at AC 738 through 743 you'll see it's a Chase Bank statement for US/Australia Limited Liability Company from August 30th, 2014 through September 30th, 2014. Do you

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see that?

A. Appears to be the case. Last page is blank, but yes.

Q. And you see there are deposits into that bank account of \$1,205,460, do you see that?

A. I do see a deposit at the bottom, total of deposits on the bottom of the first page of exhibit 13.

Q. And you see also that the beginning balance in the account was \$174,437.77, correct?

A. Yes, that's what it says.

Q. And then the ending balance after electronic withdrawals was about \$2,778, do you see that?

A. Yes, I see that.

Q. So a significant amount of money, even after the transfer to First Wives Entertainment Limited Liability Company in August, was subsequently deposited into the accounts of this company First Wives US/Australia, correct?

A. Appears to be the case. It was

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Wives Entertainment, even if all that is accurately reflecting a loan, in your view that doesn't have any bearing on the payment to Andrew Charles?

MR. ROSEN: Objection.

Q. True or false?

MR. ROSEN: Objection.

A. I can't answer true or false.

All I can say is the entries, the entries here are what they are. I have no independent knowledge of them or even nonindependent knowledge of them. The only one that we actually went to look at further was the one I mentioned a minute ago to your client. The others I have not looked at at all.

Q. I appreciate that answer.

A. By the way, I should say there are some at the bottom that look very familiar. All City is Richard Pierpont's. So maybe I should say those also have some relevance to me since they refer to some of the complaints we looked at.

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Q. My question is, do you think there's any potential relevance to the \$1.3 million in loans reflected here if those are accurate? I'm not asking you if you did any due diligence. I know you didn't. I'm asking you, assuming those are accurate, would that have relevance?

MR. ROSEN: Objection.

A. I did a limited amount of diligence on these things because I did verify in fact our bank account record did show money going out to your client and even that's how we found his address because we didn't have it in our files otherwise. So thank God that was there.

Q. But you didn't do --

A. The other thing that I would say is that, and it's consistent with your question, I believe, is that what mattered to me were transfers of the debtor's property or interest in the debtor's property for which the debtor did not receive equivalent value. And

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when I saw something like that, that was relevant to me.

When I saw payment of loans that others had made with the debtor's own -- loans to the debtor as opposed to loans to ROE, I wasn't as interested because that obviously was satisfying the debtor's own debts. So what I was concerned about was whether the debtor was satisfying not its debts but another parties' debts and that's what drew my eye to things I mentioned.

Q. So because if the debtor is satisfying its own debts, then it's getting reasonably equivalent value, correct?

A. In a general sense, yes. But I would note that there are times when a company may be satisfying debts, whether their own debts or other peoples' debts, and it isn't getting reasonably equivalent value. For instance, if the company was hopelessly insolvent at the time it made those transfers I'm not

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sure that paying those debts might not be -- might not be considered reasonably equivalent value.

So there is a general rule like everything is subject to maybe some exceptions or some caveats that we would have to at least deal with.

Q. Understood. I don't think that's accurate, but that's neither here nor there.

A. Whatever. Our view doesn't matter, it's the judge's view that will matter on that.

Q. Exactly. But just to be clear, in the time period after August 2014, when you saw the debtor paying its own debts, you weren't concerned that it was getting -- wasn't getting reasonably equivalent value because at that time if it was paying off its own debts and getting an elimination of an equivalent amount of liability for the money that it was paying out, in your view it was getting reasonably equivalent value,

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correct?

MR. ROSEN: Objection.

A. In our view we were less concerned with that because it appeared it was paying for not just loans but also, for instance, invoices for services that were provided to it.

So, in a similar category to loans where people who had claims on the debtor because they had provided legal services or accounting services or production expenses or things that the debtor was on the hook for, we saw payments going out to call it talent.

The people that we saw names we recognized were involved with the show, Rupert Holmes was one name, Brian Holland was another name. There are a bunch of names in there, all of whom have something to do with the show. And I think they were clearly owed money by the debtor. We didn't challenge those.

Q. And also I think you mentioned the -- I forget his first name, but Mr.

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Ray, he had a loan to the company that the company paid back, you guys didn't try to claw that back?

A. I again didn't challenge that. There was the other two gentlemen, one gentleman with two transfers. I think his name was also Paul something but I forget. Gilchrist maybe?

Q. Yes.

A. Yes. We again did not challenge those. We had no information that they were paying somebody else's debts.

Q. Okay. Now, let me ask you a question. Just work with me for the hypothetical. If US/Australia -- let's take US/Australia out of this for a second.

If the debtor owed \$300,000 to Reachout Entertainment and paid \$300,000 to Reachout Entertainment, would that be a fraudulent conveyance in your view?

A. If it paid Reachout Entertainment directly as opposed to having someone pay it indirectly, yes, I believe that

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would not be a fraudulent transfer if they paid it directly.

When it's paid indirectly by paying a third party, I believe they run into problems.

Q. So if the debtor transfers \$300,000 to Reachout Entertainment and Reachout Entertainment then transfers that same \$300,000 to Andrew Charles and debtor cancels \$300,000 of debt to Reachout Entertainment, then in your view that's reasonably equivalent value, that wouldn't be an issue. But if the debtor, instead of having that intermediate step, just gives the money to Andrew Charles directly and Reachout Entertainment cancels that same \$300,000 of debt, then that's a fraudulent conveyance in your view?

A. It can be.

Q. What's the substantive difference to the debtor between those two transactions? In both cases, just to be clear, in both cases the debtor pays

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\$300,000 and receives \$300,000 of -- sorry, and eliminates \$300,000 of debt that it owes to the same entity, Reachout Entertainment, so what is the substantive economic difference if the money goes to Reachout directly or to Andrew Charles?

A. The value, the initial value from the transfer went to Reachout when its debt to Charles was canceled.

We conferred a benefit on Reachout from doing that. I believe that any benefit we got from conferring of that benefit on Reachout, and Mr. Charles was the ultimate beneficiary here, you know, is a problem, for instance, if we did not get anything of value back. And I don't believe that if we're insolvent at the time we do that transfer we are really getting anything back.

As I said earlier, we may be a little less insolvent. But we're still insolvent. There's no benefit to us for

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having discharged a third party's debt in this case, notwithstanding your original hypothetical, if the payments had been made A to B and then B to C, there would be no direct claim because they decided to do it directly from A to C here, I think you run into a problem in the fraudulent transfer context. That's my basis.

Q. What is the economic difference to the debtor if the money is paid directly?

A. The debtor is out \$300,000 to Charles that it wouldn't otherwise be out if it paid, if it paid directly and it had value and value came to it. But value didn't come to it.

Q. Hold on. If it paid Reachout directly and got a cancellation of that amount of debt for that payment then it would have gotten value, yes?

A. In the event that the debtor was solvent and it could pay its bills. Otherwise, yes, I believe there would be

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value to the debtor for having paid Reachout in this situation, or it pays Reachout directly.

Q. Again, you were aware of a number of payments to Reachout directly during the same time period that you chose not to bring a fraudulent conveyance claim, correct?

A. I don't know that I had --
MR. ROSEN: Objection.

A. -- conveyance claim against Reachout. Reachout may have been a creditor of the debtor. I'm not sure about that. But it appeared that again Reachout was defunct and Mr. Charles is not defunct. So therefore we went after the person we can go after which is a trustee's right to do I understand.

Q. I understand that a fraudulent conveyance, if it's conveyed, you can actually go to any subsequent, go after any subsequent transferee as well, correct?

A. But the subsequent transferee has

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claims, defenses I should say that a direct transferee would not. Why would I do that where I have direct transfers to Charles from our bank account or Australia's bank account or whoever's bank account? Why should I have to bother going through a subsequent transferee when I have him as a initial transferee?

Q. It's looks like they paid out between May of 2014 through November of 2014, \$1,142,000 to Reachout Entertainment. Do you see that reflected there?

A. Only claims from May forward are relevant. And again, if on the books of the debtor Reachout Entertainment was a creditor and made loans and they were paying those loans back, typically that would not be a fraudulent transfer.

The other side of the coin is, however, is that there is no -- it's not clear to me that when the debtor makes a payment on behalf of Reachout

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Entertainment that that's the same as making a payment to Reachout.

Q. So the payment on behalf of Reachout is that payment that's reflected here, it's booked on 8/25/14 which we know is inaccurate, but it's booked here on 8/25 on behalf of Reachout to Andrew Charles for \$300,000. You see that?

A. That's one of the ones I've sued about, yes.

Q. And that payment is actually reflected in this return of loan column here for Reachout Entertainment, do you see that?

A. I see that. But the critical thing is --

Q. No, that's the answer --

A. Mr. Charles is the transferee and not Reachout. That's the critical fact, Mr. Cohen, you are ignoring. Just like Andrew Charles's name, All City Surgical, Richard Pierpont are also named. They were all sued.

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2 A. I don't think it's an accounting
3 question frankly, I think it's a legal
4 question.

5 Q. Did you ask anybody for help in
6 assessing that, or did you make that
7 assessment on your own?

8 A. My counsel has advised me on the
9 legal questions. I have counsel in this
10 case. And I can't tell you what we
11 talked about.

12 Q. I'm not going to ask you what you
13 talked about. Other than advice of
14 counsel, did you do anything personally
15 to verify the claims that you're making,
16 that the debtor did not receive fair
17 value in exchange for these payments?

18 MR. ROSEN: Objection. That's
19 been asked and answered about 40
20 times.

21 Q. You can answer it again.

22 A. No, I did not do anything. I did
23 refer at one point to a discussion we
24 had with Mr. Baer and he did bring some
25 of these payments to our attention. But

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2 it wasn't just his say so that we relied
3 on. We relied on the bank account
4 records and the emails I referred to and
5 other matters to kind of clarify that in
6 our view payment of a third party's
7 debts was not necessarily value to the
8 debtor whereas payments of its own debts
9 would be.

10 Q. And that's why again you weren't
11 bringing a claim for payment of its own
12 debts to Reachout Entertainment?

13 A. I believe the record shows that
14 our claims were only made payments on
15 behalf of Reachout Entertainment which I
16 understand by the way was itself
17 insolvent and defunct and not in a
18 position to be paid because clearly they
19 would have been a beneficiary of these
20 payments, and I believe under the
21 fraudulent transfer laws, you can check
22 if I'm wrong, I can actually sue the
23 party for whose benefit any transfer was
24 made. And I clearly believe in this
25 situation Reachout was a party to whose

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2 benefit these transfers were made.

3 Q. Clearly?

4 A. And clearly if they were not
5 defunct and were operating and had cash
6 in a bank account and were a real going
7 concern I would have sued them as well.

8 Q. But only on these payments, not
9 on the payments made directly to them?

10 A. I would not have bothered to sue
11 them for the payments that were their
12 own.

13 Q. And you were aware of the
14 payments directly to Reachout?

15 A. There may have been preferences
16 but I won't get into that and those
17 fraudulent transfers.

18 Q. But you were aware that there
19 were payments made directly to Reachout
20 on account of loans that Reachout had
21 made to the debtor, correct?

22 A. I've now become aware of that and
23 I do believe that the schedule that we
24 saw, that Mr. Baer showed us originally
25 which has been produced to you, I

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2 believe, did show some of these payments
3 directly to Reachout. Some of the ones
4 that are on here were certainly on that
5 schedule. Maybe all of them, but
6 certainly some of them looked like they
7 were there.

8 Q. Did you do anything to
9 investigate whether the payments that
10 were made on behalf of Reachout reduced
11 the debtor's outstanding debt to
12 Reachout?

13 A. No.

14 MR. COHEN: Let's take a ten
15 minute break if you don't mind.

16 (A recess was had.)

17 (Exhibit 16, JPMorgan Chase
18 report or advice of debit was marked
19 for identification.)

20 Q. You have in front you a document
21 that's been marked as exhibit 16. Do
22 you recognize it?

23 A. Yes. This one I've seen.

24 Q. And what do you recognize it as?

25 A. I recognize it on the stationery